

## ARTICLE 69-06

### ENERGY CONVERSION AND TRANSMISSION FACILITY SITING

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#### CHAPTER 69-06-01 GENERAL PROVISIONS

#### Section

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**69-06-01-01. Definitions.** The terms used throughout this article have the same meanings as in North Dakota Century Code chapter 49-22, and in addition:

1. "Act" means the North Dakota Energy Conversion and Transmission Facility Siting Act, North Dakota Century Code chapter 49-22.
2. "Avoidance criteria" means criteria that remove areas from consideration for energy conversion facility sites and transmission facility routes unless it is shown that under the circumstances there are no reasonable alternatives.
3. "Criteria" means policy statements that guide and govern the preparation of the inventory of exclusion and avoidance areas, and the energy conversion facility site and transmission facility corridor and route suitability evaluation process.
4. "Designated corridor" means a corridor for which a certificate has been issued by the commission.
5. "Designated route" means a route for which a permit has been issued by the commission.

6. "Designated site" means a site for which a certificate has been issued by the commission.
7. "Extractive resources" means natural resources that are removed during the construction of a facility, including sand, gravel, soil, rock, and other similar materials.
8. "Exclusion criteria" means criteria that remove areas from consideration for energy conversion facility sites and transmission facility routes.
9. "Height of the turbine" means the distance from the base of the wind turbine to the turbine blade tip when it is in its highest position.
10. "Historical resource" means a district, site, building, structure, or other object which possesses significance in history, archaeology, paleontology, or architecture, or has other cultural value to the state or local community.
11. "Party aggrieved" means a person who will be affected in a manner different from the effect on the general public.
12. "Policy criteria" means criteria that guide and govern the selection of energy conversion facility sites and transmission facility corridors and routes in order to maximize benefits during the construction and operation of a facility.
13. "Refinement" means the action or process of purifying.
14. "Selection criteria" means criteria that guide and govern the selection of energy conversion facility sites and transmission facility corridors and routes in order to minimize adverse human and environmental impact after the exclusion and avoidance criteria have been applied.
15. "Siting rules" means this article adopted by the commission pursuant to North Dakota Century Code chapter 49-22.
16. "Wetland" means an aquatic area important to the life stages of certain wildlife species as defined by the United States fish and wildlife service.

**History:** Amended effective August 1, 1979; April 1, 2013.

**General Authority:** NDCC 49-22-18

**Law Implemented:** NDCC 49-22-01, 49-22-03, 49-22-05.1, 49-22-07, 49-22-08, 49-22-08.1, 49-22-19

#### **69-06-01-02. Procedure for public hearings.**

1. **Rulemaking hearings.** A public hearing consistent with the rulemaking provisions of North Dakota Century Code chapter 28-32 must be held prior to the adoption, amendment, or repeal of a rule.

2. **Revocation or suspension hearings.** A public hearing consistent with the complaint provisions of North Dakota Century Code chapter 28-32 must be held on the revocation or suspension of a certificate or permit. Notice of the public hearing must be given by the commission by publication in the official newspaper of the county where the hearing will be held and in the official newspaper of all counties in which any part of an affected facility is located.
3. **Application hearings.** One or more public hearings must be held on an application for a certificate or a permit in each county in which any part of the site, corridor, or route is proposed to be located; provided, that the commission may consolidate the county hearings. The notice of a hearing on an application for a certificate of corridor compatibility for a transmission facility must include a map depicting the proposed corridor and study area. The notice of a hearing on an application for a route permit must include a map depicting the corridor and the location of the proposed route and any proposed alternative routes. Notice of each hearing must be given by the commission at least twenty days prior to the hearing, as follows:
  - a. By publication in the official newspaper of each county in which any part of the site, corridor, or route is proposed to be located, whether the hearings are consolidated or not, and in such other newspapers that the commission may determine to be appropriate.
  - b. By mail or electronic mail to the following persons in each county in which any part of the site, corridor, or route is proposed to be located:
    - (1) The chairman of the board of county commissioners.
    - (2) The county auditor.
    - (3) The chief executive officer of each city in the county on an application for a certificate for an energy conversion facility.
    - (4) The chief executive officer of each city within a corridor on an application for a certificate or permit for a transmission facility.
  - c. By mail or electronic mail to any state or federal agency listed in section 69-06-01-05.
  - d. By mail or electronic mail to all parties.
  - e. By mail or electronic mail to the state senators and representatives of each legislative district in which any part of the site, corridor, or route is proposed to be located.

4. **Transfer and waiver hearings.** The commission, upon determination that an application for the transfer of a certificate or permit or an application for a waiver of procedures and time schedules is complete, shall publish a notice of opportunity for a public hearing, or upon its own motion shall publish a notice of hearing, once in the official newspaper of each county in which any part of the site, corridor, or route is located or proposed to be located. A public hearing must be held on an application if, either within twenty days following the publication of a notice of opportunity any interested person requests and demonstrates good cause for a public hearing, or the commission determines upon its own motion that there is good cause for a public hearing. Notice of a public hearing must be given by the commission at least twenty days prior to the hearing by publication in the official newspaper of each county in which the site, corridor, or route is located or proposed to be located.

**History:** Amended effective August 1, 1979; January 1, 1982; April 1, 2013.

**General Authority:** NDCC 49-22-18

**Law Implemented:** NDCC 49-22-13

#### **69-06-01-03. Advisory committees.**

1. **Public representatives.** Persons appointed to an advisory committee to advise and assist the commission in the evaluation of a site or corridor who are to serve as representatives of a city or a county shall be deemed to be the public representatives on that committee.
2. **Meetings.** Committee meetings must be scheduled at the discretion of the commission. All meetings of an advisory committee must be open to the public, and public notice shall be given of the time and place of each meeting. All committee meetings must be conducted in an informal manner by the commission or its representative, and members of the public and the applicant shall be afforded a reasonable opportunity to participate in the proceedings.
3. **Term.** All members of an advisory committee serve at the pleasure of the commission.

**History:** Amended effective April 1, 2013.

**General Authority:** NDCC 49-22-18

**Law Implemented:** NDCC 49-22-14

#### **69-06-01-04. Application.**

1. **Time.** The time in which the commission is required to act in response to an application does not commence until the commission notifies the applicant in writing that the application is complete.

2. **Complete application.** An application for a certificate or permit will be deemed complete when the commission determines the application contains sufficient information and supporting documentation to enable the commission to process the application.

**History:** Amended effective April 1, 2013.

**General Authority:** NDCC 49-22-18

**Law Implemented:** NDCC 49-22-08, 49-22-08.1

**69-06-01-05. Designated agencies and officers.** The following are the designated state agencies and officers entitled to notice when so referred to in this article:

1. Aeronautics commission.
2. Attorney general.
3. Department of agriculture.
4. State department of health.
5. Department of human services.
6. Labor department.
7. Department of career and technical education.
8. Department of commerce.
9. Energy development impact office.
10. Game and fish department.
11. Industrial commission.
12. Governor.
13. Department of transportation.
14. State historical society of North Dakota.
15. Indian affairs commission.
16. Job service North Dakota.
17. Department of trust lands.
18. Parks and recreation department.

19. Soil conservation committee.
20. State water commission.
21. United States department of defense.
22. United States fish and wildlife service.
23. United States army corps of engineers.
24. Federal aviation administration.
25. The county commission of the county or counties where the project is located.
26. North Dakota transmission authority.
27. North Dakota pipeline authority.

**History:** Effective August 1, 1979; amended effective July 1, 2008; April 1, 2013.

**General Authority:** NDCC 49-22-18

**Law Implemented:** NDCC 49-22-08, 49-22-08.1

**69-06-01-06. Siting fee refund.** After all siting permits and certificates are issued by the commission and after all notice and hearing costs and expenses are paid, the commission will refund to the applicant all of the application fee paid by the applicant except five thousand dollars or the amount of the fee remaining if that amount is less than five thousand dollars. When construction and all postconstruction inspections are complete and when the commission has determined that any required tree mitigation is satisfactory, any remaining balance of the application fee will be refunded to the applicant. No refunds for less than fifty dollars will be processed.

**History:** Effective July 1, 2008.

**General Authority:** NDCC 49-22-18

**Law Implemented:** NDCC 49-22-22